

*Current Developments  
in  
Charitable Giving  
and Planning*

Emanuel J. Kallina, II, Esquire

Kallina & Associates, LLC

Towson, Maryland

410-377-2170

[www.kallinalaw.com](http://www.kallinalaw.com)

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# **PLR 200444030-Charity's Operation of Health Center Will Not Result in UBTI**

- The operation of a health center by charitable organizations has been under attack
- The IRS has determined that promoting the health of a community is a viable basis for tax exempt status
- By making the health center available to a significant segment of the population, the charitable organization will not be forced to recognize income from the health center as unrelated business income and therefore will not be subject to the related tax (UBIT)

# **PLR 200445023 and PLR 200445024- Donor Permitted to Manage Contributed Funds**

- Donor of an outright gift to a university can retain investment control of funds contributed.
- As per an agreement between Donor and University, Donor or Donor's investment advisor may manage funds for ten years
- Agreement automatically terminates in the event of "severe loss" (defined in the agreement) and lists the types of investments in which Donor may invest and prohibits Donor from using the investments personally.
- No deduction is allowed if the donor has retained substantial rights in the contributed property - the retained rights in this case were not substantial
- In order to avoid the partial interest rule, voting rights were excluded from the Agreement

# Form 1023- Revised Application for Tax-Exempt Status

- Focus of revisions is on disclosure of financial relationships among donors, trustees, and related entities and businesses
- 3 pages of questions added regarding Type III SOs
- Even on Type I and Type II SOs, major IRS concern on who appoints the trustees
- Several forms and schedules that applicants have had to file with Form 1023 have been incorporated into the new form.
- The Service is no longer accepting the old (September 1998) version of Form 1023. The revised Form 1023 and accompanying revised instructions has been available for download from the IRS Web site since November 2, 2004. Revised printed Package 1023 are available by calling 1-800-829-3676.

# **IR-2004-14-IRS Clarifies Section 501(c)(3)** **Prohibition Against Political Activity By** **Exempt Organizations.**

- Any activities that encourage people to vote for or against a particular candidate on the basis of nonpartisan criteria violate the political campaign prohibition of section 501(c)(3).
- Members of such organizations must be aware of the prohibited activities
- A violation by a charity can result in varying penalties, including a tax or even losing its tax-exempt status.
- Significant attacks by groups against churches – and rightly so.

# EO Implementing Guidelines- Emphasis on Enforcement

- Enforcement for the fiscal year 2005 was the number one priority for the IRS EO Division according to, Division Director Martha Sullivan.
- Sullivan said the EO Division's enforcement efforts will focus on four areas: antiterrorism, abusive tax avoidance transactions, credit counseling, and excessive compensation.
- The IRS will also be looking closely at donor-advised funds and abuses involving section 509(a)(3) supporting organizations.

**United States v. Guess, No. 04 CV 2184 W (S.D. Cal. Oct. 29, 2004)- California Court and U.S. Justice Department Cracking Down on Tax Shelters**

- A California District Court issued a temporary restraining order to freeze more than \$500 million in bank and investment accounts of Xélan Inc., a firm allegedly running fraudulent insurance and charity schemes mainly for clients in the medical profession.
- The Justice Dept. alleged that Xélan and others allegedly sold abusive tax shelters to thousands of medical professionals.
- In one alleged fraudulent scheme, the defendants operate the Xélan Foundation as a donor-directed fund. The Foundation purportedly allows doctors to make tax-deductible donations, and then direct those donations to pay for the college tuition of the doctors' children (either as an outright payment to the college or university, or as a purported loan to the donor's child), or to pay the doctors for doing charitable, "pro bono," work.

**Lapham Foundation Inc. v. Commissioner; No. 03-1229 (US Ct. of Appeals 6th Cir., Nov. 18, 2004)-Foundation Doesn't Qualify as Supporting Organization**

- Lapham Foundation determined not to qualify as a Supporting Organization because it did not meet the integral-part test under section 1.509(a)-4(i)(3)
- The Foundation failed this test because it anticipated contributing too small of a contribution to ensure the attentiveness of a publicly supported organization (AEF) and the alleged program that it supported was not a substantial part of the AEF's work.
- There was also no specific evidence of actual communication between Lapham and AEF.

# **PLR 200447033- IRS Rules that Judicial Reformation does not Violate IRC §664**

- Donor created and funded a CRUT with the intention of retaining the power to change the charitable beneficiaries and their percentage interests but attorney neglected to include such a provision.
- On request by Donor, state court reformed the trust to reflect the intention of Donor and the IRS ruled that the trust's judicial reformation did not violate §664
- Assuming the terms of the trust are otherwise valid under §664, the reformed trust will be treated as a valid CRUT from the beginning.

**David C. Roark et al. v. Commissioner; T.C. Memo. 2004-271;  
No. 9231-02; No. 5105-03 (Nov. 29, 2004)- Couple  
Denied Deductions for Charitable Split Dollar Life  
Insurance Agreement**

- In following *Addis v. Commissioner*, 118 T.C. 528 (2002), and in *Weiner v. Commissioner*, T.C. Memo. 2002-153, the Tax Court held that David and Irene Roark may not claim 1998-1999 charitable deductions for amounts given to a section 501(c)(3) charitable organization and subsequently used to pay the premiums on an insurance policy on David's life that was owned by a trust benefiting the Roark family.
- Deductions in charitable split-dollar life insurance agreements failed due to a lack of substantiation of a charitable contribution with a written acknowledgment by the charity stating whether the donor received "any goods or services in consideration, in whole or in part," for his donation. IRC § 170(f)(8)(B)(ii). In both *Addis* and *Weiner*, the court held that letters from a charity stating that no consideration was received were inadequate substantiation if the charity was paying premiums for life insurance benefiting the donor or his family.
- On February 22, 2005 the Supreme Court denied review of both *Addis* and *Weiner*.

# **PLR 200449033- IRS Approved** **Flexible Starting Date Gift Annuity**

- Donor can utilize a flexible start date gift annuity in which the annuity agreement allowed him to choose when annuity payments were to begin within a specified eight year period in the future.
- The charity will not have UBIT for providing the flexible start date charitable gift annuity to the donor.

# **Circular 230- IRS Releases Final Regulations on Circular 230 Standards of Practice ("Circular 230")**

- In an effort to limit abusive tax avoidance transactions and tax shelters, the IRS published final regulations that amplify ethical standards for tax professionals who provide advice on federal tax issues or submissions to the IRS. Circular 230 applies to written tax advice.
- Circular 230 requires "covered opinions" to (1) recite the factual matters in the case, relate the law to the facts, and evaluate significant Federal tax issues or (2) to have a disclaimer, prominently displaying a statement that the written advice is not intended to be used, and cannot be used, for the purpose of avoiding IRS penalties or recommending to another party any transaction or matter addressed in the advice.

# **PLR 200452004- Assignment of IRAs, Annuities to Charity Not Taxable**

- Assignment of IRAs and annuity contracts that named a decedent's estate as beneficiary to a 501(c)(3) charity will not cause the estate or any of its beneficiaries to have taxable income or cause the estate to include any amount in its distributable net income.

## **PLR 200502044-Informal Church Not a Qualified Donee under 170(b)(a)(A)(i)**

- An organization that functioned as a church in some respects (it conducted religious services on Sundays and offered Bible study) did not qualify for exemption as a church because it lacked ecclesiastical government, did not perform “life cycle rituals” like weddings and baptisms, had no code or doctrine or literature, and whose pastor was not formally ordained and had no formal training.

# **ILM 200504031- IRS Lays Out Standards for International Grantmaking by Charities**

- In a legal memorandum, the IRS set out standards, similar to those governing domestic grant-making, that dictate how United States charities must conduct their international grantmaking activities.
- Special standards for international charitable activities apply only in specific areas. For example, while supporting a foreign government does not qualify as a charitable activity, a deduction may be taken for a transfer of property to a foreign government if the transfer is used for exclusively charitable purposes.
- In the case of grants by private foundations to foreign entities, the recipient will be treated as if it were a 501(c)(3) organization if the foundation manager reasonably believes the grantee is organized and operated as such and the grantor foundation, in good faith, determines that the foreign grantee fits the section 509 definition of private foundation.

# Rev. Proc. 2005-24- Charitable Remainder Trusts, Safe Harbor to Disregard Right of Election

- The Service released Rev. Proc. 2005-24 to provide a safe harbor procedure that, if followed, would cause the right of election to be disregarded for purposes of determining whether a CRAT or CRUT that is within the scope of the Rev. Proc. meets the requirements of §664(d) continuously from the date the trust is created.
- For CRTs created on or after June 28, 2005, the Rev. Proc. generally requires that the spouse of the donor irrevocably waive the right of election with regard to the assets of the CRAT or CRUT to ensure that no part of the trust will be used to satisfy their spousal elective share.
- For CRTs created before June 28, 2005, the IRS will disregard a spouse's right of election and a waiver does not need to be obtained for the trust to avoid disqualification. (However, if the spouse exercises the right of election, the CRT is disqualified from the date of creation.)
- Rev. Proc. 2005-24 has received much criticism from the tax and charitable community as the waiver of spousal election requirement seems like a severe "solution" to a not so prevalent problem.

# Circular 230-IRS Revises Circular 230 Regulations

- On May 19, 2005, final regulations revising the regulations governing practice before the IRS were released to clarify the standards for “covered opinions”
- It was most likely in response to the volumes of feedback the IRS received from affected professionals and organizations in response to the final regulations issued in December 2004.
- **Some tax practitioners appreciated and praised this guidance (which excepted certain communications from the definition of “covered opinion”). Others felt that the revision was not very helpful. Overall, most feel more guidance will still be needed from the Service to clarify the definitions of certain terms used in the Circular 230 Regulations.**

# **Notice 2005-44; 2005-25 IRB 1- IRS** **Explains New Rules for Charitable** **Donations of Vehicles**

- The IRS issued interim guidance (effective until Regulations are issued) on the deductibility of vehicle contributions under section 170(f)(12).
- The guidance explains requirements for donee acknowledgement letters and penalties for providing a false acknowledgment of a vehicle contribution or for failing to furnish the acknowledgment. The guidance varies depending upon the value of donated vehicles (under \$500, over \$500, and over \$5,000).

# **Panel on the Nonprofit Sector Final Report to Congress and the Nonprofit Sector- Panel on the Nonprofit Sector Releases Final Report on Governance of Charities**

- On June 22, 2005, the Panel on the Nonprofit Sector convened by the Independent Sector ("Panel") issued its Final Report to Congress and the Nonprofit Sector ("Report") regarding the possible ways of improving transparency and governance of charities.
- The Report was in response to the Senate Finance Committee ("SFC") Discussion Draft on Reform for EOs ("White Paper") which it issued on June 21, 2004.
- The Panel's Report made sixteen recommendations. The two items in the Panel's list of recommendations that the Executive Director of the Independent Sector, Diana Aviv, said were the most significant were: (1) increasing transparency, and (2) mandating electronic filing. Aviv also emphasized that Form 990 and 990PF should be simplified and revised to provide more transparency to the public and the IRS.

**Albert Strangi et al. v. Commissioner, 96 AFTR 2d 2005-5230,  
Aug. 8, 2005-Fifth Circuit affirms “Strangi II” Holds  
Individual Retained Enjoyment of Assets Transferred to  
Family Partnership**

- The Fifth Circuit affirmed a Tax Court decision, Estate of Albert Strangi, et al. v. Commissioner, T.C. Memo 2003-145 (commonly referred to as *Strangi II*).
- The value of assets an individual transferred to a family limited partnership are includable in his estate under §2036(a) because he retained enjoyment of the transferred assets and there was no bona fide sale. Section 2036(a) provides that transferred assets of which the decedent retained de facto possession or control prior to death are included in the taxable estate.
- The Tax Court held that Albert Strangi retained enjoyment of the assets in question, and thus, that the transferred assets were properly included in the estate.

# PLR 200530007- No Self-Dealing Found on Pledge of Corporate Stock Options to Foundation

- Superseding an earlier private letter ruling, the IRS ruled that a NYSE corporation's pledge of stock options to their private foundation (PF) will not be an act of self-dealing under section 4941.
- The PF will not directly exercise the options, because that would be self-dealing; instead, the options will be transferred to an unrelated "public" charity.
- Because the stock option transfer was a pure gift without consideration, the gift of the options did not create self-dealing issues.
- The proposed transfer of the option to a public charity, and also the exercise of the option by the public charity will not be an act of self-dealing.
- Gain on the transaction will not be UBIT.
- How about Section 170(f)(3) and the split interest rules? Is the income tax deduction to be allowed? If so, why?!

# PLR 200530029- Tax Consequence of Charitable Trust's Proposed Property Divisions Addressed

- The Service has ruled that a perpetual charitable trust's procurement of engineering plans and the division of land into parcels won't cause the land to be held primarily for sale to customers in the ordinary course of a trade or business under section 512(b)(5) and so the gain is not UBIT.
- Among other facts, one important fact to note was that the charity would sell no more 2 lots per year for 20 years!!
- *See also, Phalen, TC Memo 2004-206, PLR 200510029, PLR 200242041, and PLR 200532057 (later slide).*

# **PLR 200532022- Judicially Reformed Trust Instrument Did Not Invalidate CRUT Status**

- The Service ruled that a court-authorized amendment to a trust specifying that realized post-contribution capital gains will be included in the trust's income
- The amendment does not prevent the trust from qualifying as a net income charitable remainder unitrust under section 664(d).

# **PLR 200532057- Sale of Land to Raise Money for Improvements Will Not Affect Exemption**

- The Service ruled that a religious organization's sale of property to finance repairs and improvements will not adversely affect its tax-exempt status.
- The charity had owned the property for over 50 years and could not afford to make the improvement necessary on a building.
- The charity planned to subdivide the property into 7 lots, retaining one and selling 6, and to make physical improvements to the land in question.
- The sale of parcels to individuals or developers with limited improvements will not be unrelated business taxable income under sections 511 and 512.
- This PLR was similar to PLR 200530029.

# Rev. Proc. 2005-52 through Rev. Proc. 2005-59- IRS Releases Eight Sample Declarations of Trust for CRUTs

- The IRS released eight new annotated sample declarations of trust and alternate provisions for inter vivos and testamentary charitable remainder unitrusts with varying measuring terms. Until this time, the IRS had issued sample trust instruments for certain types of CRUTs. This updates previously issued samples and adds new samples for additional types of CRUTs.
- They are:
  - Rev. Proc. 2005-52; 2005-34 IRB 326 (Inter Vivos CRUT Declaration for One Measuring Life)
  - Rev. Proc. 2005-53; 2005-34 IRB 326 (Inter Vivos CRUT Declaration for a Term of Years)
  - Rev. Proc. 2005-54; 2005-34 IRB 353-(Inter Vivos CRUT Declaration for Consecutive Measuring Lives)
  - Rev. Proc. 2005-55; 2005-34 IRB 367- (Inter Vivos CRUT Declaration for Concurrent and Consecutive Measuring Lives)
  - Rev. Proc. 2005-56; 2005-34 IRB 383- (Testamentary CRUT Declaration for One Measuring Life)
  - Rev. Proc. 2005-57; 2005-34 IRB 392- (Testamentary CRUT Declaration for a Term of Years)
  - Rev. Proc. 2005-58; 2005-34 IRB 402- (Testamentary CRUT Declaration for Consecutive Measuring Lives)
  - Rev. Proc. 2005-59; 2005-34 IRB 412- (Testamentary CRUT Declaration for Concurrent and Consecutive Measuring Lives)

# **PLR 200535006- Service Allows Estate Tax Charitable Deduction After Trust in Will Reformed**

- A decedent's will created a trust for the benefit of his son during the son's life and then for charity. The charitable remainder interests in the trust did not qualify for the estate tax charitable deduction under Code § 2055(a).
- In an effort to qualify the charitable remainder interests for the deduction, the son disclaimed the discretionary invasions of principal for his medical expenses provided for in the trust.
- Next, the trust was partitioned into two trusts and the second trust was replaced with a CRUT.
- The IRS ruled that an estate tax charitable deduction will be allowed for the value of the charitable interests in the new CRUT, resulting from the trust reformation.

# **PLR 200537020 – Funding of Charitable Lead Unitrust Constitutes A Complete Gift**

- The Service has ruled the funding of a charitable lead unitrust will constitute a completed gift, that the grantors may take a gift tax deduction calculated from the unitrust interest's present value, and that, when either grantor dies, the trust principal will not be considered part of the grantors' gross estate.

# **REG-111257-05- IRS released proposed Regulations on Intermediate Sanction and Recognition of Exempt Status**

- The IRS released Proposed Regulations on the standards for recognizing tax-exempt status if an organization: (1) benefits a private interest, (2) has engaged in excess benefit transactions.
- The Proposed Regulations provide guidance on factors the IRS will consider to determine whether a 501(c)(3) organization that engages in one or more excess benefit transaction continues to qualify under section 501(c)(3).
- The Proposed Regulations clarify the relationship between the requirements for tax exemption under section 501(c)(3) and the imposition section 4958 excise taxes. The imposition of excise taxes for excess benefit transactions does not foreclose revocation of an organization's tax-exempt status by the IRS.
- The Proposed Regulations also clarify that the IRS can refuse to issue a ruling recognizing exemption under section 501(c)(3) to any applicant whose purpose or activities violate any provision of section 501(c)(3), even when the violation could serve as grounds for imposing section 4958 excise taxes if the applicant's tax-exempt status were recognized.

# Katrina Emergency Tax Relief Act of 2005 - President Signed the Katrina Relief Bill

- The President signed this legislation designed to assist hurricane victims and encourage charitable donations ("the Act").
- The Act encouraged various types of donations by extending related deductions.
- *irect* tax-free rollovers of IRA assets to charity failed to make it into the final Act. However, other provisions in the Act may facilitate the indirect IRA rollovers. The Act temporarily suspends the 50% limitation for "qualifying contributions" to the extent such gifts exceed the donor's "other" charitable contributions. A qualifying contribution must be made: (1) in cash; (2) to a public charity as described in IRC 170(b)(1)(A), excluding gifts to supporting organizations and donor advised funds; and (3) between August 28, 2005 and ending on December 31, 2005. In addition, the Act provides an exception to the 3% reduction of itemized deductions in section 68 for "qualified contributions."

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# **PLR 200543061 – Early Termination of CRUT will not Constitute Self-Dealing**

- The Service has ruled that a proposed early termination of a charitable remainder unitrust will not be considered self-dealing under section 4941(d).
- Those persons disqualified with respect to the trust will not be liable for taxes under sections 4941(a) and (b).

# Tax Reform Panel Makes Recommendations to Encourage Charitable Giving

- The President's Advisory Panel on Federal Tax Reform issued six recommendations in its final report intended to encourage charitable giving and improve tax administration.
- Recommendation 1: Create a deduction, available to all taxpayers, for charitable contributions that exceed one percent of income.
- Recommendation 2: Allow tax-free IRA distributions to be gifted directly to qualified charities, without first including the amount in the donor's income.
- Recommendation 3: Require charities to report gifts that exceed a certain amount (recommended to be at least \$600) directly to both the IRS and the donor.
- Recommendation 4: Allow taxpayers to give the proceeds from sold property to charity, without recognizing gain on the sale and taking a full charitable deduction, *provided that* the sale is an arm's-length transaction and that the proceeds are donated within sixty days of the sale's closing.
- Recommendation 5: Clarify standards for appraisals; require appraisers to report appraised values to the IRS, the donor, and the charity; implement new penalties for appraisers who misrepresent the value of appraised property; and allow deductions for donations of used personal property (clothing, household items, etc.) only when the charity furnishes a price list and itemized receipt to the donor.
- Recommendation 6: Improve oversight and governance of tax-exempt entities; in particular, legislators should take a fresh look at which types of organizations should qualify as tax-exempt.

# S. 2020, "Tax Relief Act of 2005" (TRA2005) passed by Senate 11/18/05

- Senate Bill 2020 contains a number of provisions concerning charitable giving.
- First of all, the bill affects charitable deductions by individual donors with a mix of incentives and restrictions. It contains stricter rules concerning the appraisal of gifts, and larger penalties for overvaluation. It permits non-itemizers to deduct charitable cash gifts greater than \$210 (or \$420 for taxpayers filing jointly). Additionally, it allows taxpayers to make tax-free distributions from IRAs to charitable organizations. However, the bill places a floor of \$210 (or \$420, as the case may be) for gifts by itemizers, effectively preventing a deduction for the first \$210 or \$420 of a gift's value. Another important restriction on charitable deductions contained in the bill is the elimination of "reliable written records" (other than cancelled check or receipt) as an option of recordkeeping for deductible gifts of less than \$250. Finally, the bill would raise the AGI limitation from 30% to 50% for contributions of qualified conservation property, and permit farmers and ranchers to deduct up to 100% of their AGI for such gifts.
- Most notable among the provisions concerning private foundations are proposed tax increases for self-dealing. The bill also contains numerous new restrictions on SOs. SOs would be prohibited from having deductible DAFs. They would be prohibited from making payments to their substantial contributors or these persons' families, unless this contributor is a non-SO charity; in effect, this prevents SOs from making grants to other SOs. The bill applies the excess holdings rules of § 4943 to all Type III SOs and some Type II SOs.
- Type III SOs, in particular, would feel the effects S. 2020 should it pass into law as-is. The bill contains stricter distribution requirements for this type of SO. Also, new Type III SOs would be limited to five supported organizations (SedOs) and would not be allowed to name foreign charities as SedOs. Existing SOs would be prevented from naming additional SedOs if doing so would have them supporting more than five organizations. Type III SOs would be prohibited from making grants to DAFs. Type III SOs would be required to submit a letter from each of their SedOs on their Forms 990 stating the SedOs consent to be supported and how it expects being a SedO will help to further its mission. Lastly, to ensure responsiveness, Type III SOs would have to inform each SedO of their support.
- S. 2020 seeks to regulate DAFs. Perhaps most significantly, it takes the unprecedented step of putting forth a statutory definition of a DAF. A DAF would be defined as a fund or account that is "separately identified contributions of donor(s) that are owned by a Sponsoring Charity (SC) eligible to receive them where donor(s) (or their designee) [reasonably] expect to have advisory privileges regarding distributions and investing." Other provisions for DAFs set how much they must distribute, how often distributions should be advised, which types of assets should or should not go into them, and in which ways donors should not benefit.
- S. 2020 has two stipulations concerning charities' UBIT. It requires that charities publicly disclose their UBIT by making their Forms 990T open for public inspection. It also requires that charities have their UBIT certified by an independent auditor.
- The bill provides for penalties against charities involved in tax shelters. Charities that participate knowingly in a prohibited listed tax shelter would face an excise tax of 100% of the attributable net income or 75% of the attributable gross income, whichever is greater. The excise tax would apply to any attributable income from the tax shelter if it is listed after the charity becomes involved. Charities that fail to disclose their involvement in a tax shelter or fail to identify other known participants would face a \$100/day penalty, up to \$50,000. A charity's manager that approves involvement in a tax shelter would be subject to a \$20,000 fine.
- The bill would implement the following miscellaneous incentives to charitable giving: allow all businesses to take deductions for food donations; implement more favorable basis adjustment on contributions of S corp. stock; expand book donation deductions; implement UBIT rules for controlled subsidiaries' payments; improve allowable deductions for literary, musical, artistic and scholarly compositions; and exclude from gross income mileage reimbursements for charitable volunteers.
- S. 2020 has miscellaneous restrictions concerning charity-owned life insurance, gifts of façade easements, "related-use" property gifts not used for exempt purposes, gifts of clothing and household items, fractional interest donations, appraisals, and credit counseling organizations. The bill also defines "associations" or "conventions" of churches, and requires a broader class of entities to file with the

# **Estate of Mildred S. Jackson v. United States; No. 2:04CV34 – Estate was Wrongly Denied Charitable Deduction**

- Donor's estate claimed a charitable deduction for amount left to remainder beneficiary church after trustees and beneficiaries terminated a trust due to conflict of interest concerns.
- The Service denied the deduction because the beneficiaries were both charitable and non-charitable
- The Court ordered Service to refund tax to the estate with interest.
- The Court observed that the church had received an outright and undivided cash distribution equal to the amount of the deduction claimed by the estate and that the trustees and beneficiaries terminated the trust out of good-faith concerns of conflict-of-interest, not to circumvent section 2055(e).
- Four factors courts have previously recognized in resolving section 2055(e) issues: (1) the directness of the gift of property to charity, (2) the presence or absence of noncharitable interest in the property, (3) the match between the amount of the deduction and the actual benefit realized by the charity, and (4) the sincerity of the estate's charitable intent.

# **P.L. 109-135 – Gulf Opportunity Zone Act Clears, Signed into Law**

- On December 21, 2005 the President signed the Gulf Opportunity Zone Act of 2005 (“GOZA”) into law.
- GOZA creates a “Gulf Opportunity Zone” composed of hurricane-stricken areas of Louisiana, Mississippi, and Alabama (“the Zone”).
- Title I of GOZA is concerned chiefly with tax incentives to rebuild residential housing, repair commercial buildings, and relieve some of the burden on employers that provide their employees with housing. Title I of GOZA also provides certain tax breaks for recovering businesses located within the Zone, and contains provisions for states and municipalities to recover revenue with tax-favorable bonds.
- Title II of GOZA provides tax relief for individuals and families affected by the hurricanes, as well as charitable giving incentives for hurricane-related contributions.
- Title III of GOZA contains several miscellaneous provisions including the option for military personnel to include combat pay as earned income for purposes of calculating Earned Income Credit.

# **IR 2005-144 – IRS Announces New User Fee Schedule for 2006**

- Effective February 1, 2006, Exempt Organization letter ruling fees will increase to \$275 to \$8,700.
- Effective July 1, 2006, Exempt Organization fees for determination letters and requests for group exemption letters, which presently range from \$150 to \$500, will increase to \$300 to \$900.
- The Service also announced that the Exempt Organizations division will no longer issue rulings on joint ventures of an exempt organization with a for-profit organization or on the qualifications of state-run programs under IRC section 529.
- Rev. Proc.s 2006-1 and 2006-8, both released January 3, 2006, give detailed information on the changes in user fees.

**Michael Sklar et ux. V. Commissioner; 125**  
**T.C. No. 14; No. 395-01 – Tuition**  
**Payments Are Not Gifts to Charity**

- A couple took a charitable deduction on their income tax return for a portion of their tuition payments to their children's Orthodox Jewish day schools, which corresponded to the portion of each school day devoted to religious instruction. The Service denied said charitable deduction.
- Observing that the couple received the substantial benefit of their children's education for the money, and that they produced no evidence of genuine charitable intent, the Court concluded in favor of the Service.

# **PLR 200552018 – Foundation Denied Extra Time to Dispose of Excess Business Holdings**

- A private foundation may not enjoy an extension period for disposal of excess business holdings.
- The foundation had five years during which to dispose of these holdings.
- The Service further noted that in January 2005, the foundation had turned down an offer to purchase all of its excess shares, and had been advised orally by the Service that depressed market price of the stock was not sufficient grounds for granting an extension.
- Most importantly of all, the Service observed that the foundation had presented neither a specific plan of disposition that could reasonably be expected to be accomplished within five years, nor a specific deadline by which the excess stock would be sold.

# **PLR 200601003 - IRS Rules on Unintentional Transfer of Funds to Account of Charitable Remainder Unitrust**

- Trustee (and Settlor's personal financial advisor) mistakenly put funds from the liquidation of a personal investment into the investment account of a CRUT and while the settlor took no tax deduction for the gift, the amount was included in calculating unitrust distributions for three years.
- When the mistake was noticed upon review of the CRUT's performance, the settlor and spouse obtained a court ruling essentially intended to reverse the mistake, contingent upon a favorable letter ruling from the Service.
- The Service has indeed ruled favorably, agreeing that the erroneously transferred funds were never part of the trust's corpus, and that the return of the funds will not be an act of self-dealing and will not jeopardize the trust's status as a CRUT.

# **Notice 2006-15 – Spousal Consent Waivers** **No Longer Required for CRTs**

- The June 28, 2005 grandfather date in Rev. Proc. 2005-24 was extended until further guidance has been issued by the Service.
- Until such time, the Service will disregard the existence of a spousal right of election when determining whether a trust qualifies as a CRT, even in the absence of a waiver, provided that the spouse does not exercise said right of election.

# **PLR 200608002 and PLR 200608003 – IRS** **Rules Favorably on Trust Agreement of** **Real Estate Pooled Income Fund**

- Four provisions in a pooled income fund's trust agreement that do not appear in the sample trust forms of Rev. Proc. 88-53 will not adversely affect its qualification as a pooled income fund under § 642(c)(5).
- The pooled income fund will be created by a tax-exempt hospital that intends to renovate two of its buildings.
- The pooled income fund will accept contributions, liquidate contributed property if necessary, and use the proceeds to buy the buildings and rent the land from the hospital. Then, the fund will renovate the buildings and lease them. The fund's income beneficiaries will receive pro-rata shares of its net rental income.

# **TAM 200610017 – Gifts of Railroad Rights-of-Way Were Gifts of Partial Interest in Real Property**

- Gifts of railroad rights-of-way are deemed transfers of partial interests in real property.
- Nonetheless, the railroads might still be allowed a charitable deduction if they retained only an “insubstantial” interest.
- On the other hand, Treas. Regs. §1.170A-7(a)(3) say that a donor’s deduction for a gifted partial interest in property will not be impermissible solely because the benefit to charity might be defeated by some future act or event, as long as the possibility of such an act or event coming to pass is “so remote as to be negligible.”
- Because these questions of substantiality and remoteness are purely factual, and because the IRS auditor and the railroads could not agree on a statement of facts, the National Office could not reach a conclusion in this advice memorandum.

# IR-2006-25 – IRS Announces “Dirty Dozen” Tax Scams for 2006

- The Service has released its list of the twelve most notorious tax scams for 2006. The “Dirty Dozen” tally, briefly listed here, comprises the following:
- “Zero Wages”
- Form 843 Tax Abatement
- “Phishing”
- “Zero Return”
- Trust Misuse
- Frivolous Arguments
- Return Preparer Fraud
- Credit Counseling Agencies
- Abuse of Charitable Organizations and Deductions
- Offshore Transactions
- Employment Tax Evasion
- “No Gain” Deductions

# Panel on the Nonprofit Sector Supplemental Report

- Issued April 26<sup>th</sup>
- Addresses:
  - International Grantmaking
  - Charitable Solicitation
  - Compensation of CRT Trustees
  - Prudent Investor Standard
  - Conversion of TXs to for profit entities
  - Taxation of Sales of Donated Property
  - Consumer Credit Counseling Charities
  - Disclosure of UBIT
  - Federal Equity Court Powers & Standing to Sue

# CRS Report on Limitations on Political Activity of Tax Exempts

- Issued April 20<sup>th</sup>
- Key = a tax exempt cannot promote a political candidate
- Don't allow the pulpit to be used for advocacy of a candidate, even if a disclaimer is made that the viewpoint is private and not that of the church
- Be careful!!!

# New Dynamics Foundation

## US Ct. Cl. – filed 4/24/2006

- Split-off from National Heritage Foundation (I believe)
- Finder fees paid to Estate Preservation Services created by key donor
- “[I]t is important to realize that charitable use which is normally non-taxable can also benefit the Donor and the Donor’s family.” = pay your children
- “...Henkell indicated that ‘ninety-five percent’ of the money contributed to a charity could be used for administration....”
- NDF was “a very power long range planning device to establish, tax-free, a nest-egg that can provide retirement benefits....”

# New Dynamics Foundation

## US Ct. Cl. – filed 4/24/2006

- Review is “de novo”
- Review may be limited to the administrative record
- Burden of proof shifts to IRS if 270 days have elapsed
- Application for tax exempt status can be modified and the court can consider the modification in judging status (snap upon creation and snapshots along the way!) – IRS really does like this!!!!!!!
- Date of tax exempt may vary, depending on facts and when modifications occurred

**Caspian Consulting Group**  
**T.C. Memo. 2006-85; No. 18124-03**

- Good summary of when legal fees are available
- Present client with 3 fold test:
  - You must be the prevailing party
  - You must have exhausted administrative remedies
  - You must not have protracted the case
  - You must claim “reasonable” litigation costs
- \$150/hour unless you can prove unique talents required
- Tax attorney skills are not unique!
- Have associates do all of the work!!!!!!!!!!!!!!

# Tax Reconciliation Act

- To be passed this week or early next week